IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 28242 of 2006(K)

PETITIONER:

ABDUL AZEEZ, S/O. HASSAN KUNJU,
"SUBAH", CHITTATTUMUKKU P.O., PIN-695588,
MENAMKULAM MURI, MENAMKULAM VILLAGE,
THIRUVANANTHAPURAM TALUK, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.M.DINESH
SRI.SOMASEKHARAN NAIR

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR OF
THIRUVANANTHAPURAM DISTRICT, DISTRICT COLLECTORATE
THIRUVANANTHAPURAM.

2. REVENUE DIVISIONAL OFFICER,
OFFICE OF THE R.D.O., THIRUVANANTHAPURAM.

3. TAHSILDAR, TALUK OFFICE, CHIRAYINKEEZHU TALUK,
ATTINGAL, THIRUVANANTHAPURAM DISTRICT.

4. TAHSILDAR (REVENUE RECOVERY),
TALUK OFFICE OF CHIRAYINKEEZHU TALUK, ATTINGAL IN
THIRUVANANTHAPURAM DISTRICT.

5. TAHSILDAR (REVENUE RECOVERY), TALUK OFFICE,
THIRUVANANTHAPURAM.

6. DEPUTY TAHSILDAR (R.R),
TALUK OFFICE, CHIRAYINKEEZHU TALUK AT ATTINGAL.

7. VILLAGE OFFICER, ATTINGAL-AVANAVANCHERY VILLAGE,
CHIRAYINKEEZHU TALUK IN THIRUVANANTHAPURAM DISTRICT.

8. VILLAGE OFFICER,
MENAMKULAM VILLAGE, THIRUVANANTHAPURAM TALUK.

9. RAJENDRAN NAIR, S/O.RAGHAVAN PILLAI,
K.R. NIVAS, CHITTATTUMKARA DESOM,ATTINGAL VILLAGE,
CHIRAYINKEEZHU TALUK,THIRUVANANTHAPURAM DISTRICT.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF SALE DEED DATED 19/02/2004 WITH REGISTRATION NUMBER 574/2004 OF ATTINGAL SUB REGISTRY.

P2 : COPY OF THE ENCUMBRANCE CERTIFICATE DATED 05/06/2002 FOR 01/01/1989 TO 04/06/2002.

P3 : COPY OF THE ENCUMBRANCE CERTIFICATE DATED 05/06/2002 FOR 01/01/1989 TO 04/06/2002.

P4 : COPY OF THE ENCUMBRANCE CERTIFICATE DATED 21/07/2005 FOR 01/01/2003 TO 12/07/2005.

P5 : COPY OF COMMUNICATION DATED 20/03/2005 ISSUED TO THE PETITIONER BY THE SECRETARY, ATTINGAL MUNICIPALITY.

P6 : COPY OF THE LAND TAX RECEIPT DATED 06/04/2004 ISSUED BY THE KIZHUVILAM VILLAGE OFFICE SHOWING PAYMENT BY THE PETITIONER FOR THE YEAR 2004-05.

P7 : COPY OF APPLICATION BY PETITIONER DATED 04/10/2006 BEFORE THE PUBLIC INFORMATION OFFICER OF CHIRAYINKEEZHU TALUK.

P8 : COPY OF DEMAND NOTICE DATED 13/08/2004 ISSUED BY THE 5TH RESPONDENT.

P9 : COPY OF THE DEMAND NOTICE ISSUED by the 5TH RESPONDENT DATED NIL SEEN DISPATCHED ON 19/08/2004.

P10 : COPY OF DEMAND NOTICE DATED 19/08/2005 ISSUED by the 3RD RESPONDENT.

P11 : COPY OF INTIMATION LETTER OF TAHSILDAR, CHIRAYINKEEZHU DATED 16/01/2006 AND RECEIVED BY THE PETITIONER ON 13/03/2006 BY REGISTERED POST.

P12 : COPY OF THE REPRESENTATION SUBMITTED BY PETITIONER DATED 15/03/2006 BEFORAE THE 3RD RESPONDENT.

P13 : COPY OF COMMUNICATION DATED 19/08/2006 ISSUED BY THE 1ST RESPONDENT TO THE 5TH RESPONDENT.

P14 : COPY OF COMMUNICATION ADDRESSED TO THE 8TH RESPONDENT, THE MENAMKULAM VILLAGE OFFICER, BY THE 5TH RESPONDENT.

P15 : COPY OF JUDGMENT DATED 24/05/2006 IN W.A. NO. 451/2005 OF THIS HON'BLE COURT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 28242 of 2006

Dated, this the 2nd day of July, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings initiated for recovery of sales tax dues against the property purchased by the petitioner from 9th respondent, who is defaulter to sales tax for about Rs. 10 lakhs. According to the petitioner, he is a bonafide purchaser of the property and was unaware of tax liability of the 9th respondent. Learned counsel for the petitioner has referred to judgment of this Court in W.A.No. 451/2005 and WP(C) No. 18583/05 dated 25/05/2006. Learned Government Pleader, on the other hand, contended that judgment does not refer to Sec. 26A of the KGST Act, which creates charge on defaulter's property for recovery of arrears of sales tax.

2. I am unable to accept the contention of the petitioner based on the judgment of this Court above referred. The said judgment does not refer to Sec. 26A of the KGST Act, which creates charge on the property of the defaulter. There is no statutory provision that such charge on property created by statute should be

registered with registration Department or Sub Registrar. Therefore, the encumbrance certificate issued by the Sub Registrar naturally will not contain any statutory charge. However, non-registration of statutory charge with the Registry does not affect the charge on property by operation of Sec. 26A of the KGST Act. Section 26A of the KGST Act reads as follows :

> "Section 26A. Certain transfers to be void:-(1) Where, during the pendency of any proceedings under this Act or after the completion thereof, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever), of any of his assets in favour of any person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee under this Act."

3. The decision of this Court referred to above, which was rendered without reference to nature of liability and statutory provisions under which attachment and sale is proceeded against, cannot therefore be relied upon. Therefore, respondents are free to proceed for attachment and sale of property purchased by the petitioner from the defaulter as provided under Sec. 26A of the

KGST Act. However, I grant an opportunity to the petitioner to clear the arrears of sales tax dues with 50% interest, provided the entire liability as above i.e. with reduced rate is paid within a period of three months from today. However, if payment is not made, entire arrears with full interest will be recovered by sale of property purchased by the petitioner from the defaulter. If possession is taken over, there will be a direction to respondents to release the possession of the property on petitioner giving a post dated cheque for full liability as above, encashable on any date after three months from today. In that case, there will be direction to the petitioner not to part with possession of the building until cheque is honoured and liability cleared. If liability is cleared, reduction of interest granted above will be applicable for the entire period of default.

(C.N.RAMACHANDRAN NAIR, JUDGE)

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